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Washington, Wednesday, October 2, 1940

The President

ADMINISTRATION OF SECTION 6 OF THE ACT ENTITLED "AN ACT TO EXPEDITE THE STRENGTHENING OF THE NATIONAL DEFENSE," APPROVED JULY 2, 1940

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS section 6 of the act of Congress entitled "AN ACT To expedite the strengthening of the national defense," approved July 2, 1940, provides as follows:

"SEC. 6. Whenever the President determines that it is necessary in the interest of national defense to prohibit or curtail the exportation of any military equipment or munitions, or component parts thereof, of machinery, tools, or material, or supplies necessary for the manufacture, servicing, or operation thereof, he may by proclamation prohibit or curtail such exportation, except under such rules and regulations as he shall prescribe. Any such proclamation shall describe the articles or materials included in the prohibition or curtailment contained therein. In case of the violation of any provision of any proclamation, or of any rule or regulation, issued hereunder, such violator or violators, upon conviction, shall be punished by a fine of not more than $10,000.00 or by imprisonment for not more than two years, or by both such fine and imprisonment. The authority granted in this section shall terminate June 30, 1942, unless the Congress shall otherwise provide."

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority vested in me by the aforesaid act of Congress, do hereby proclaim that upon the recommendation of the Administrator of Export Control I have determined that it is necessary in the interest of the national defense that on and after October 15, 1940, the following-described articles and materials shall not be exported from the United States except when authorized in each case by a license as provided for in Proclamation No. 2413[1] of July 2, 1940, entitled "Administration of section 6 of the act entitled 'An Act to expedite the strengthening of the national defense' approved July 2, 1940," and in the regulations issued pursuant thereto:

Fire Control Instruments, Military Searchlights, Aerial Cameras and other types of Military Equipment containing optical elements.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 30'' day of September, in the year of our Lord nineteen hundred and forty, and of the Independence of the United States of America the one hundred and sixty-fifth.

[SEAL]

FRANKLIN D ROOSEVELT

By the President:

CORDELL HULL,
Secretary of State.

[No. 2428]

[F. R. Doc. 40-4103; Filed, October 1, 1940; 12:01 p. m.]

EXECUTIVE ORDER

TRANSFERRING THE USE, POSSESSION, AND CONTROL OF CERTAIN LANDS TO THE TENNESSEE VALLEY AUTHORITY

ALABAMA

WHEREAS under the River and Harbor Act of 1879 (20 Stat. 363), authorizing certain improvements in the Tennessee River, the United States acquired certain hereinafter-described lands in Lawrence County, Alabama, for the construction of the Elk River Shoals Canal; and

WHEREAS the said lands are now under the control and jurisdiction of the War Department by virtue of the acquisition under the authority of the said

[1] 5 F.R. 2467.

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FEDERAL REGISTER

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River and Harbor Act of 1879 for authorized river and harbor improvement purposes; and

WHEREAS the completion of the General Joe Wheeler Dam across the Tennessee River by the Tennessee Valley Authority makes the retention of these tracts of land by the War Department unnecessary, and the canal, together with locks A and B thereon, has been discontinued as a navigation facility, and the property pertaining thereto is no longer required by the War Department; and

WHEREAS the use, possession, and control of the said lands are needed by the Tennessee Valley Authority for its purposes as stated in the Tennessee Valley Authority Act of 1933 (48 Stat. 58):

NOW, THEREFORE, by virtue of the authority vested in me by section 7 of the said Tennessee Valley Authority Act of 1933 (48 Stat. 63; U. S. C., title 16, sec. 831f (b)), it is ordered that the use, possession, and control of the following-described parcels of land comprising the Elk River Shoals Canal, Alabama, together with the locks, buildings, and other improvements thereon and pertaining thereto, be, and they are hereby, transferred to the Tennessee Valley Authority:

Lands bordering the Tennessee River and located in sections 34, 35, and 26, township 3 south, range 7 west, Lawrence County, Alabama, and islands or portions thereof in the said river and located in said sections 34 and 26, the said areas comprising two parcels which are more particularly described as follows:

Parcel 1

Section 34, a portion of the northeast quarter more particularly described as follows: Beginning at a point in the section line between sections 34 and 35 which is 4,245 feet north of the southeast corner of section 34:

Thence S. 51°40′ W., 440 ft., to a U. S. stone monument;

Thence S. 38°20′ E., 100 feet, to a U. S. stone monument;

Thence S. 51°40′ W., 1,400 ft., to a U. S. stone monument;

Thence N. 38°20′ W., 100 ft., to a U. S. stone monument;

Thence S. 51°40′ W., 760 ft., to a point in the low-water line of the left bank of the Tennessee River;

Thence from said point in the low-water line of the left bank N. 42°51′59″ E., 979.89 ft., to a point in the low-water line at the downstream point of the island below Lock B;

Thence from said point in low-water line of the downstream point of the island, northeastwardly along the low-water line of the right bank of the island to a point where the low-water line intersects the section line between sections 34 and 35;

Thence south along the said section line 741 ft., to the point of beginning, containing approximately 19.5 acres, having been purchased in fee simple from J. H. Gilchrist, et ux., and Malcolm J. Gilchrist, Jr., by deed dated June 28, 1882, as recorded in Deed Book "T", page 176, in the office of the Judge of Probate, Lawrence County, Alabama, and from M. J. Gilchrist, Jr., and James H. and Nannie B. Gilchrist, by deed dated February 28, 1891, as recorded in Deed Book "Y", page 408, in the office of the Judge of Probate mentioned above.

Parcel 2

Sections 35 and 26, a portion of the northwest quarter of section 35 and the south half of section 26 more particularly described as follows: Beginning at a point in the section line between sections 34 and 35 which is 4,245 feet north of the southwest corner of section 35;

Thence No. 51°40′ E., approximately 3,260 ft., to a point in top of the south bank of Elk River Shoals Canal;

Thence S. 40°30′ E., to a U. S. stone monument on the bluff above said point in the south bank of the canal;

Thence N. 49°30′ E., 700 ft., to a U. S. stone monument;

Thence S. 46°00′ E., 430 ft., to a U. S. stone monument;

Thence N. 60°00′ E., 600 ft., to a U. S. stone monument;

Thence N. 16°00′ W., 410 ft., to a U. S. stone monument;

Thence N. 68°45′ E., 135 ft., to a U. S. stone monument;

Thence No. 68°45′ E., 265 ft., to a U. S. stone monument;

Thence No. 77°00′ E., 250 ft., to a U. S. stone monument;

Thence in a northwestwardly direction to a U. S. stone monument in the low-water line of the right bank of the island adjacent to Lock A;

Thence from said monument downstream along the right bank of said island to a point in the low-water line, said point being located 356 ft., N. 35°30′ W., of a stone monument on the north bank of the canal;

Thence from said point in the low-water line S. 35°30′ E., 356 ft., to a U. S. stone monument;

Thence S. 51°40′ W., along the top of the north bank of the canal to a point in the section line between sections 34 and 35;

Thence south along the section line 191 ft., to the point of beginning, containing approximately 29.41 acres, having been purchased in fee simple from E. C. Ashford, and J. H. Harris, Commissioners, by deed dated May 20, 1881, recorded in Deed Book "S", pages 549, 550, and 551, in the office of the Judge of Probate, Lawrence County, Alabama, and from M. J. Gilchrist, Sr., Commissioner, by deed dated April 1, 1891, recorded in Deed Book "Y", page 439, in the office of the Judge of Probate mentioned above.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
September 28, 1940.

[No. 8556]

[F. R. Doc. 40-4078; Filed, September 30, 1940; 2:25 p. m.]

REGULATIONS GOVERNING THE EXPORTATION OF ARTICLES AND MATERIALS DESIGNATED IN THE PRESIDENT'S PROCLAMATION OF JULY 26, 1940, ISSUED PURSUANT TO THE PROVISIONS OF SECTION 6 OF THE ACT OF CONGRESS APPROVED JULY 2, 1940

Pursuant to the authority vested in me by the provisions of section 6 of the Act of Congress approved July 2, 1940, entitled "An Act to expedite the strengthening of the national defense", I hereby prescribe the following additional regulations governing the exportation of:

IRON AND STEEL SCRAP

1. As used in my proclamation of July 26, 1940,[1] issued pursuant to the provisions of section 6 of the Act of Congress approved July 2, 1940,[2] and in the regulations of July 26, 1940,[3] issued in accordance with that proclamation, the construction and definition of the term "iron and steel scrap", is hereby amended to read:

Iron and Steel Scrap. All iron and steel scrap of every kind and description, classified or unclassified.

2. Regulations 2 to 12, inclusive, of the regulations issued on July 2, 1940, pursuant to the act of July 2, 1940, are applicable to the exportation of iron and steel scrap.

3. This regulation shall become effective October 16, 1940.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE
September 30, 1940.

[F. R. Doc. 40-4102; Filed, October 1, 1940; 12:01 p. m.]

[1] 5 F.R. 2677.
[2] 5 F.R. 2469.
[3] 5 F.R. 2689.

Rules, Regulations, Orders

TITLE 6—AGRICULTURAL CREDIT

CHAPTER I—FARM CREDIT ADMINISTRATION

[FCA 199]

SUBCHAPTER C—REGULATIONS ISSUED BY THE FEDERAL LAND BANKS

PART 26—FEDERAL LAND BANK OF ST. LOUIS

Section 26.1 of Title 6, Code of Federal Regulations is amended to read as follows:

§ 26.1 *Application fees on Federal land bank and Commissioner loans.* The bank charges initial and closing fees on applications as follows:

Amount of application	(1) Initial [1]	(2) Balance [2]	(3) Total
$100 to 2,500	$10.00	.....	$10.00
$2,600 to $7,500	10.00	$5.00	15.00
$7,600 to $15,000	10.00	10.00	20.00
$15,100 to $25,000	10.00	15.00	25.00
$25,100 and over	10.00	20.00	30.00

[1] The initial fee (column 1) is based upon the amount applied for and must be collected by the secretary-treasurer and be forwarded to the bank with the application. If no appraisal is made, this fee will be returned.
[2] Column 2 is based upon the amount(s) closed and is deducted from the proceeds if and when the loan(s) is closed.

A joint federal land bank and commissioner loan will be treated as one loan in computing the fee to be charged; i. e., the fee deducted from the proceeds of the loan will be based upon the aggregate amount of the two loans closed.
"(Sec. 13 'Ninth', 39 Stat. 372, secs. 32, 33, 48 Stat. 48, 49, as amended; 12 U.S.C. 781 'Ninth', 1016 (e), 1017, and Sup.; 6 CFR 19.4019) [Resolution Board of Directors September 19, 1940]"

[SEAL] THE FEDERAL LAND BANK OF ST. LOUIS.
By O. J. LLOYD,
Vice President.

[F. R. Doc. 40-4084; September 30, 1940; 4:10 p. m.]

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

ORDER AUTHORIZING ASSISTANT TO THE SECRETARY OF THE DEPARTMENT OF AGRICULTURE TO AUTHENTICATE DOCUMENTS OF THE DEPARTMENT

I, Paul H. Appleby, Acting Secretary of Agriculture, do hereby authorize Carl Hamilton, Assistant to the Secretary, to authenticate, under the Seal of the Department of Agriculture, pursuant to section 882 of the Revised Statutes, as amended by section 6 (a) of the act approved June 19, 1934 (48 Stat. 1109; 28 U.S.C., sec. 661), copies of any books, records, papers, or other documents, or any books or records of account in whatever form, or minutes (or portions thereof) of proceedings, or copies of such minutes of proceedings, in the Department of Agriculture; and I direct that, upon each such authenticated copy or original, as the case may be, there shall appear a recital that such copy or original has been authenticated and the Seal of the Department of Agriculture affixed thereto by direction of the Secretary of Agriculture; and I further direct that each such certificate of authentication shall bear the genuine signature of the said Assistant to the Secretary.

This order is in addition and supplementary to the order of authorization dated December 3, 1936.

Done at Washington, D. C., this 1st day of October, 1940. Witness my hand and the seal of the Department of Agriculture.

[SEAL] PAUL H. APPLEBY,
Acting Secretary of Agriculture.

[F. R. Doc. 40-4094; Filed, October 1, 1940; 11:56 a. m.]

CHAPTER III—BUREAU OF ENTOMOLOGY AND PLANT QUARANTINE

[B.E.P.Q. 499, Sup. No. 1, Sec. Rev.] [1]

ORDER MODIFYING ADMINISTRATIVE INSTRUCTIONS TO INSPECTORS ON THE TREATMENT OF NURSERY PRODUCTS, FRUITS, VEGETABLES, AND SOIL, FOR THE JAPANESE BEETLE

Pursuant to the authority conferred upon the Chief of the Bureau of Entomology and Plant Quarantine by § 301.48–6, Chapter III, Title 7, Code of Federal Regulations [Regulation 6 of the rules and regulations (17th revision) supplemental to Notice of Quarantine No. 48 on account of the Japanese beetle, as amended], subsection (1) (5) of § 301.48b [2] on page 13 of the mimeographed edition of circular B.E.P.Q. 499, issued June 9, 1939, is hereby modified to read as follows:

(5) METHYL BROMIDE FUMIGATION

Equipment. An approved fumigation chamber equipped with vaporizing, air-circulating, and ventilating systems must be provided:

Application. After the chamber is loaded, the methyl bromide must be vaporized within it. The air within the chamber must be kept in circulation during the period of fumigation. At the completion of the treatment, the chamber must be well ventilated before it is entered and the plants removed. The ventilating system should also be in continuous operation during the entire period of removal of the fumigated articles.

(i) Fumigation of Plants, With or Without Soil

Temperatures, periods of treatment, and dosages. The temperature of the

[1] First revision appears at 5 F.R. 1116.
[2] This section was originally issued as § 301.48a.

soil (with bare root stock, the root spaces) and of the air for each type of treatment must remain throughout the entire period of treatment at the minimum specified in the following table, or higher:

Temperature at least	Period of treatment	Dosage (methyl bromide per 1,000 cubic feet)
	Hours	*Pounds*
1. 70° F.	2½	2
2. 63° F.	2½	2½
3. 54° F.	4	2½
4. 50° F.	4½	2½

The dosage shall be for each 1,000 cubic feet including the space occupied by the load.

Preparation of plants. The treatment is to be applied to plants with bare roots or in 12-inch pots or smaller, or in soil balls not larger than 12 inches in diameter nor thicker than 12 inches when not spherical. The soil should not be puddled or saturated and must be in a condition which in the judgment of the inspector is suitable for fumigation. The plants should be stacked on racks or separated so that the gas can have access to both top and bottom surfaces of pots or soil balls. While not essential that the balls be completely separated from each other they should not be jammed tightly together. Treatments 1 and 2 may be employed in fumigating packaged plants prepared in a manner satisfactory to the inspector.

Results of further experiments in treatment of plants with methyl bromide for compliance with the certification requirements of § 301.48 [Notice of Quarantine No. 48] indicate that the additional authorized method of fumigation is effective in destroying the Japanese beetle.

Varieties of plants. The list of plants, including greenhouse, perennial, and nursery-stock types treated experimentally, is subject to continual expansion and, moreover, is too great to include in these instructions. Such a list, including also those which have been injured by the treatment, will be supplied on request.

The schedule for the fumigation of strawberry plants as specified in subsection (1) (5) (ii) of Sec. 301.48b [page 14 of the mimeographed edition of circular B.E.P.Q. 499] remains the same as heretofore.

This supplement supersedes Supplement No. 1—Revised, dated March 22, 1940.

Done at the city of Washington, this 27th day of September 1940.

[SEAL] AVERY S. HOYT,
Acting Chief.

[F. R. Doc. 40-4093; Filed, October 1, 1940; 11:56 a. m.]

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

CHAPTER II—AGRICULTURAL MARKETING SERVICE

NOTICE UNDER PACKERS AND STOCKYARDS ACT [1]

OCTOBER 1, 1940.

To WILLIAM ANDERSON, R. S. BOWDEN, MAX SCHUFT, AND THOMAS THOMPSON, *doing business as Rapid City Livestock Sales Company, Rapid City, S. Dak.*

Notice is hereby given that after inquiry, as provided by section 302 (b) of the Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 202 (b)), it has been ascertained by me that the stockyard known as the Rapid City Livestock Sales Company, at Rapid City, State of South Dakota, is subject to the provisions of said Act.

The attention of stockyard owners, market agencies, dealers, and other persons concerned is directed to Sections 303 and 306 (7 U.S.C. Secs. 203 and 207) and other pertinent provisions of said Act and the rules and regulations issued thereunder by the Secretary of Agriculture.

[SEAL] GROVER B. HILL,
Assistant Secretary of Agriculture.

[F. R. Doc. 40-4098; Filed, October 1, 1940; 11:57 a. m.]

NOTICE UNDER PACKERS AND STOCKYARDS ACT [1]

OCTOBER 1, 1940.

To D. J. GATENS, *doing business as Iowa City Sales Company, Iowa City, Iowa.*

Notice is hereby given that after inquiry, as provided by section 302 (b) of the Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 202 (b)), it has been ascertained by me that the stockyard known as the Iowa City Sales Company, at Iowa City, State of Iowa, is subject to the provisions of said Act.

The attention of stockyard owners, market agencies, dealers, and other persons concerned is directed to Sections 303 and 306 (7 U.S.C. Secs. 203 and 207) and other pertinent provisions of said Act and the rules and regulations issued thereunder by the Secretary of Agriculture.

[SEAL] GROVER B. HILL,
Assistant Secretary of Agriculture.

[F. R. Doc. 40-4097; Filed, October 1, 1940; 11:57 a. m.]

[1] Modifies list posted stockyards 9 CFR 204.1.

NOTICE UNDER PACKERS AND STOCKYARDS ACT [1]

OCTOBER 1, 1940.

To A. C. HANSEN, *doing business as Butte Livestock Market, Butte, Nebr.*

Notice is hereby given that after inquiry, as provided by section 302 (b) of the Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 202 (b)), it has been ascertained by me that the stockyard known as the Butte Livestock Market, at Butte, State of Nebraska, is subject to the provisions of said Act.

The attention of stockyard owners, market agencies, dealers, and other persons concerned is directed to Sections 303 and 306 (7 U.S.C. Secs. 203 and 207) and other pertinent provisions of said act and the rules and regulations issued thereunder by the Secretary of Agriculture.

[SEAL] GROVER B. HILL,
Assistant Secretary of Agriculture.

[F. R. Doc. 40-4099; Filed, October 1, 1940; 11:58 a. m.]

TITLE 10—ARMY: WAR DEPARTMENT

CHAPTER III—CLAIMS AND ACCOUNTS

PART 36—CLAIMS AGAINST THE UNITED STATES [2]

DESERTERS

§ 36.40 *Effects abandoned by a deserter.* (a) At the expiration of 6 months, if the deserter has not been returned to military control, the following action will be taken:

(1) When application for the effects has been received from relatives or personal representative of the deserter, or other person having title thereto, all effects (except the adjusted compensation certificate, which will be forwarded to The Adjutant General), will be shipped as requested without expense to the Government.

(2) When application for the effects has not been received from relatives or personal representative or other person having title thereto—

(i) The adjusted compensation certificate, insignia, decorations, discharge certificates, and other military papers will be forwarded to The Adjutant General.

(ii) Articles having monetary value will be disposed of by sale, and the proceeds therefrom will be deposited with a disbursing officer, whose receipt will be taken and forwarded to The Adjutant

[2] §§ 36.40 and 36.41 are added.

General. The receipt will clearly indicate the nature of the deposit, that is, whether for the proceeds of sale, undrawn pay, or money belonging to the deserter. The officer responsible will furnish the disbursing officer with the information necessary to prepare the receipt.

(iii) Articles having no salable value will be destroyed.

(b) In no case will money or proceeds of the sale of effects of a deserter be turned over to his relatives, nor any payment be made therefrom by any officer on any account whatsoever. (R.S. 161; 5 U.S.C. 22) [Par. 5, AR 615–300, Aug. 14, 1940]

§ 36.41 *Deposits.* Both deposits and interest are forfeited by desertion. (34 Stat. 246, 41 Stat. 766; 10 U.S.C. 906) [Par. 8, AR 615–300, Aug. 14, 1940]

Certified to be a true copy of the original.

[SEAL] E. S. ADAMS,
Major General,
The Adjutant General.

[F. R. Doc. 40-4083; Filed, September 30, 1940; 4:05 p. m.]

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION

PART 531—REASONABLE COST OF BOARD, LODGING, AND OTHER FACILITIES

The following amended Regulations—Part 531—Reasonable Cost of Board, Lodging, and Other Facilities, are hereby issued. These regulations shall become effective upon my signing the original and upon the publication thereof in the FEDERAL REGISTER, and shall be in force and effect until repealed or modified by regulations hereafter made and published.

Signed at Washington, D. C., this 1st day of October 1940.

PHILIP B. FLEMING,
Administrator.

§ 531.1 *Reasonable cost under section 3 (m) of the act.* The term "reasonable cost" in section 3 (m) of the act is hereby determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.

(a) Reasonable cost does not include a profit to the employer or to any affiliated person.

(b) The reasonable cost to the employer of furnishing the employee board, lodging or other facilities (including housing) is hereby determined to be the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5½ percent) for interest on the depreciated amount of capital invested by the employer; provided that if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under good accounting practices.

(c) The term "good accounting practices" shall not include accounting practices which have been rejected by the Bureau of Internal Revenue for income tax purposes. The term "depreciation" shall include obsolescence.

(d) The cost of furnishing "facilities" which are primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages.

The following list of facilities found by the Administrator to be primarily for the benefit or convenience of the employer is meant as illustrative rather than exclusive: (1) Tools of the trade and other materials and services incidental to carrying on the employer's business; (2) the cost of any construction by and for the employer; (3) the cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

§ 531.2 *Hearing to determine reasonable cost.* (a) The Administrator or his duly authorized representative may at any time, upon motion of the Administrator, or upon application of an employer, or upon application of an employee or group of employees, or an agent or representative thereof, hold a hearing to determine the reasonable cost to an employer of the board, lodging, or other facilities customarily furnished to his employees.

(b) An employee's application shall state (1) the name and location of his employer, (2) the nature of the board, lodging, or other facilities furnished and whether or not these facilities are customarily furnished by the employer, (3) the charges or deductions made therefor by the employer, (4) the cash wages paid and (5) the reason why the hearing is requested.

(c) An employer's application shall state (1) the name and location of his place or places of business; (2) a detailed description of the board, lodging, or other facilities customarily furnished to the employees and asserted by the employer to constitute wages; (3) an itemized statement of the actual cost to the employer of board, lodging or other facilities furnished; (4) an itemized statement of the cash wages paid; and (5) the reason why the hearing is requested.

(d) The hearing will be held by the Administrator or his duly authorized representative at a place as close to the employer's place of business as is practicable.

(e) A notice of the time, place, and scope of the hearing will be published in the FEDERAL REGISTER and made public by a general press release at least five days before the date of such hearing. The determination of the Administrator or his duly authorized representative shall likewise be published in the FEDERAL REGISTER and made public by a general press release.

(f) The employer shall notify his employees of the place, time, and purpose of the hearing by posting notices thereof, in a form prescribed by the Wage and Hour Division, in conspicuous places on his premises. In the event that the determination is made by an authorized representative of the Administrator, the employer shall in like manner notify his employees of the opportunity for reconsideration and review of the determination pursuant to § 531.3.

§ 531.3 *Application for reconsideration and petition for review.* Any person aggrieved by the determination of an authorized representative made pursuant to § 531.2:

(a) may, within fifteen days after publication of the determination (1) make application for reconsideration thereof by the authorized representative of the Administrator who made the determination in the first instance if it can be shown that there is additional evidence which may materially affect the determination and that there were reasonable grounds for failure to adduce such evidence in the original proceedings, or (2) file a petition for review of the determination by the Administrator or an authorized representative who has taken no part in the action which is the subject of review. Such petition must set forth grounds for the requested review. The petition will be examined by the Administrator or an authorized representative who has taken no part in the determination which is sought to be reviewed.

(b) If an application for reconsideration is denied any person aggrieved by such action may, within fifteen days after publication thereof, file a petition for review.

(c) If an application for reconsideration is granted, all interested parties will be afforded an opportunity to present their views either in support of or in opposition to the matters prayed for in the application for reconsideration. Upon publication of the reconsidered determination, all interested persons may, within fifteen days thereafter, file a petition for review.

(d) If a petition for review is granted, all interested persons will be afforded an opportunity to present their views either in support of or in opposition to the matters prayed for in such petition. Action taken upon a petition for review shall be final.

§ 531.4 *Petition for amendment of regulations.* Any person wishing a revision of any of the terms of the foregoing regulations may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, upon inspection of the petition, the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provision for affording interested parties an opportunity to present their views, either in support of or in opposition to the proposed changes. In determining such future regulations, separate treatment for different industries and for different classes of employees may be given consideration.

[F. R. Doc. 40-4092; Filed, October 1, 1940; 11:54 a. m.]

TITLE 30—MINERAL RESOURCES

CHAPTER III—BITUMINOUS COAL DIVISION

[Order No. 303]

ESTABLISHMENT OF TEMPORARY EFFECTIVE MINIMUM PRICES FOR COAL FOR WHICH MINIMUM PRICES HAVE NOT BEEN ESTABLISHED; EFFECTIVENESS OF CODE ACCEPTANCES

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Pursuant to the Bituminous Coal Act of 1937, minimum prices have been established in General Docket No. 15, and are being established in General Docket No. 15-A, for all but a minute fraction of the bituminous coal subject to the jurisdiction of the Bituminous Coal Division (hereinafter called the Division) under the Bituminous Coal Act of 1937 (hereinafter called the Act). For the purpose of establishing and maintaining a more effective system of minimum prices for bituminous coal subject to the jurisdiction of the Division, it is necessary that an order be entered providing for the prompt establishment of temporary effective minimum prices for coal for which minimum prices have not been established in General Docket No. 15,[1] or are not being established in General Docket No. 15-A,[2] and for coal produced by new acceptants of the Bituminous Coal Code.

Accordingly, *It is ordered*, That:

PART 301—RULES OF PRACTICE AND PROCEDURE

§ 301.113 *Filing by District Boards.* Pursuant to section 4 II (d) of the Act, any District Board, or its authorized representative, may hereafter file with the Division a petition for the establishment of minimum prices for coals of Code members in its district, accompanied by a request for a temporary order forthwith establishing such minimum prices, for which coals no minimum prices have been (a) established in the Schedules of Effective Minimum Prices promulgated by the Director in General Docket No. 15 or Supplements thereto, or (b) proposed by the Division in Schedules A or B attached to Orders dated June 24, 1940, and July 31, 1940, respectively, in General Docket No. 15-A, or (c) established by the Director in proceedings instituted pursuant to this Order; or for which coals no such minimum prices have been established or proposed for shipment by methods of transportation used in the marketing of said coal; *Provided*, That all 4 II (d) petitions and requests for temporary orders filed pursuant to this Order, shall propose the establishment of minimum prices for coal in terms of the symbols of and shall be in conformity with the effective minimum prices for analogous and comparable coals heretofore established by the Director in General Docket No. 15.*

§ 301.114 *Filing by Code member.* Pursuant to section 4 II (d) of the Act, any Code member may hereafter file with the Division a petition as prescribed and provided for in § 301.113 of this part for coals produced by that Code member; *Provided, however*, That on or before the date of filing such petition with the Division, he shall serve a copy thereof by registered mail on the District Board for the district in which his mine is located.*

§ 301.115 *District Board recommendation.* The District Board, within 10 days after the filing of a petition with the Division by a Code member, may file with the Division its recommendation for minimum prices for the coal of the petitioner in terms of the symbols of and in conformity with the effective minimum prices for analogous and comparable coals heretofore established by the Director in General Docket No. 15.*

§ 301.116 *Establishment of temporary minimum prices.* The Division shall in all appropriate 4 II (d) proceedings instituted pursuant to this Order, and pursuant to section 6 (a) of the Act, in all other situations in which District Boards should or might have filed 4 II (d) petitions pursuant to this Order, establish effective temporary minimum prices for said coal in terms of the symbols of and in conformity with the effective minimum prices for analogous and comparable coals established by the Director in General Docket No. 15. Such temporary effective minimum prices shall remain in effect until the establishment, after hearing, pursuant to notice hereafter to be issued, of final effective minimum prices for said coals.*

§ 301.117 *Contents of petition.* Petitions filed pursuant to this Order shall contain the proposal of minimum prices for coal, as provided above, and the following information to the extent available: the name of the mine; the state, county, and township in which the mine is located; the seam mined; the modes of transportation involved in transporting coal; the names of the railroads, if any, which are available for the shipment of coal from the mine; the shipping point or points of the mine; the approximate tonnage moved by each mode of transportation for the years 1938, 1939, and 1940; geographic areas into which the mine ships, or is expecting to ship, coal; the names of one or more adjacent mines producing coal of similar quality for which a price has been established by the Director in General Docket No. 15 or in proceedings instituted pursuant to this Order, or proposed by the Division in General Docket No. 15-A; and any special and unusual features in the quality, preparation, or distribution of coal from the mine.*

§ 301.118 *Service.* Copies of petitions or recommendations in connection with Code members' petitions which are filed by a District Board with the Division pursuant to this Order shall be served by mail, on or before the date such petitions or recommendations are filed with the Division, upon all other District Boards and upon each Code member whose mine is located within the district.*

§ 301.119 *Applicability of 4 II (d) rules and regulations.* In the interest of the expeditious establishment of minimum prices hereunder, the "Rules and Regulations Governing Practice and Procedure Before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937," dated February 9, 1940, as amended,[3] (hereinafter referred to as the 4 II (d) Rules and Regulations) shall be applicable to proceedings instituted or taken pursuant to this Order, only to the extent practicable and consistent with the provisions and purpose of this Order.*

§ 301.120 *Limitations of petition.* Petitions filed pursuant to this Order shall not request modification of minimum prices which are specifically provided in the Schedules of Effective Minimum Prices in General Docket No. 15 or Supplements thereto, which have been established by the Director in pro-

[1] 5 F.R. 2961, 3199, 3405.

[2] 5 F.R. 2757.

*Issued pursuant to the authority contained in section 2 (a), 50 Stat. 72, 15 U.S.C. Supp. section 829 (a); and section 4 II (d), 50 Stat. 80, 15 U.S.C. Supp. section 833 (d).

[3] §§ 301.101 to 301.112, inclusive, appear at 5 F.R. 693; § 301.112 as amended appears at 5 F.R. 1814.

ceedings instituted pursuant to this Order, which have been proposed by the Division in General Docket No. 15–A, or which may be ascertained by application of the price instructions and exceptions contained in said schedules. The provisions of this Order are not intended to limit the right of any person to file other appropriate petitions pursuant to section 4 II (d) of the Act, in accordance with the 4 II (d) Rules and Regulations.*

PART 349—MISCELLANEOUS ORDERS AND RULINGS

§ 349.18 *Effective date of Code acceptances filed on or after October 1, 1940.* On and after October 1, 1940, membership in the Bituminous Coal Code shall not become effective until 30 days after the date of filing an acceptance thereof unless minimum prices, temporary or final, are established by the Bituminous Coal Division for coal from acceptant's mine. On and after October 1, 1940, the form of Code Acceptance, promulgated by Order No. 290, dated February 14, 1940, and currently in use (hereinafter referred to as the Code Acceptance), shall have firmly appended to the first page thereof, a rider reading as follows:

"Any provision herein to the contrary notwithstanding, membership in the Bituminous Coal Code shall not become effective until 30 days after the date of filing acceptance thereof unless minimum prices, temporary or final, are established by the Bituminous Coal Division for coal of acceptant's mine."**

§ 349.19 *Right to file petition.* Any applicant who files a Code Acceptance on and after October 1, 1940, or the District Board for the district in which that applicant's mines are located, may file a petition pursuant to and in accordance with all the foregoing provisions of this Order for the establishment by the Division of minimum prices for coal produced by the applicant for which no effective minimum prices theretofore established are applicable, accompanied by a request for a temporary order forthwith establishing such minimum prices.**

§ 349.20 *Temporary effective minimum prices.* On and after October 1, 1940, in respect to coal produced by each applicant for Code membership who files his Code Acceptance on and after that date and for which coal no effective minimum prices theretofore established are applicable, the Division shall establish temporary minimum prices pursuant to the provisions of the Code Acceptance or pursuant to a petition filed under section 4 II (d) of the Act pursuant to this Order, in terms of the symbols of and in conformity with the effective minimum prices for analogous and comparable coals established by the Director in General Docket No. 15. Such temporary effective minimum prices shall remain in effect until the establishment, after hearing, pursuant to notice hereafter to be issued, of final effective minimum prices for said coals.**

Dated, September 26, 1940.

[SEAL] DAN H. WHEELER,
Acting Director.

[F. R. Doc. 40–4085; Filed, October 1, 1940; 9:41 a. m.]

**Issued pursuant to the authority contained in section 2 (a), 50 Stat. 72, 15 U.S.C. Supp. section 829 (a); and section 5 (a), 50 Stat. 83, 15 U.S.C. Supp. section 835 (a).

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

CHAPTER I—VETERANS' ADMINISTRATION

PART 4—ADJUDICATION: VETERANS CLAIMS, CENTRAL OFFICE SECTION

SERVICE REQUIREMENTS; PERSONS INCLUDED, IN ADDITION TO OFFICERS AND ENLISTED MEN, OTHER THAN THOSE MENTIONED IN THE ACT OF JULY 14, 1862, AND OTHER CONTROLLING LAWS

§ 4.2006 *Public, No. 2, 73d Congress.* (*See also* § 2.1001.) (c) Reserve officers and members of the enlisted reserves of the United States Army ordered to active duty for training purposes are also entitled to pension under Public No. 159, 75th Congress. However, such benefits shall not be payable prior to the date of claim or June 23, 1937, whichever is the later. In the event such a person is or becomes eligible for the benefits of the United States Employees Compensation Act (Public No. 179, 76th Congress, approved July 15, 1939 and Public No. 747, 76th Congress, approved July 18, 1940) and is also eligible for, or is in receipt of, a pension based upon military service, he shall elect which benefit to receive. On or after April 3, 1939 such reservists, if called or ordered into the active military service by the Federal Government for extended military service in excess of thirty days, and who suffer disability in line of duty from disease or injury incurred while so employed shall be deemed to have been in the active military service during such period and shall be entitled to the benefits provided by section 5, Public No. 18, 76th Congress. Reserve officers who may have a right to benefits under section 5, Public No. 18, 76th Congress, for disability incurred prior to July 15, 1939, who file claim within one year from July 18, 1940, have an election under Public No. 747, 76th Congress, but reserve officers who are entitled to benefits under section 5, Public No. 18, 76th Congress, for disability incurred on or subsequent to July 15, 1939, do not have such an election. (October 5, 1940.) [Public No. 747, 76th Congress]

[SEAL] FRANK T. HINES,
Administrator.

[F. R. Doc. 40–4082; Filed, September 30, 1940; 3:24 p. m.]

TITLE 45—PUBLIC WELFARE

CHAPTER II—CIVILIAN CONSERVATION CORPS

PART 203—ENROLLMENT, DISCHARGE, HOSPITALIZATION, DEATH AND BURIAL OF ENROLLEES [1]

§ 203.3 *Eligibility for selection and reselection*—(a) *Selection.*

* * * * *

(2) *Excluded from selection and enrollment.*

* * * * *

(iii) Those who have been previously dismissed or administratively or dishonorably discharged.

* * * * *

(b) *Reselection.*

* * * * *

(3) A member dismissed or administratively or dishonorably discharged from the Civilian Conservation Corps is thereafter ineligible for reselection: *Provided, however,* That a former enrollee, the type of whose separation from the Civilian Conservation Corps is changed by the corps area commander from dismissal, administrative, or dishonorable to honorable, is eligible for reselection at any enrollment period, if he be otherwise legally qualified. A former enrollee may have been offered reinstatement by the corps area commander, but his refusal to accept reinstatement when offered will not act as a bar to the reselection when contemplated. (50 Stat. 319) [Par. 19, C.C.C. Regs., W.D., Dec. 1, 1937, as amended by C 58, Sept. 19, 1940]

* * * * *

§ 203.4 *Eligibility for enrollment and reenrollment.*

* * * * *

(c) *Reenrollment.*

* * * * *

(2) *Unworthy enrollees.*

* * * * *

(iii) *Notation on discharge certificate.* The discharge certificate of an enrollee denied the privilege of reenrollment, because of unsatisfactory performance of duties or other substantial reasons, will contain under "Remarks" the notation: "Not qualified for reenrollment". The notation will be immediately followed by the authenticating signatures of the company commander and the project superintendent. (50 Stat. 319) [Par. 20, C.C.C. Regs., W.D., Dec. 1, 1937, as amended by C 58, Sept. 19, 1940]

§ 203.6a *Vaccination and inoculation.* (a) Upon enrollment all men, except as indicated in (c), will be vaccinated promptly against smallpox and inoculated against typhoid. Notation thereof will be made under Record of Inoculation, in Section V, C.C.C. Form No. 1. In cases in which enrollees refuse to submit to inoculation or vaccination, they will be dismissed. Personnel of the

[1] Part 203 is amended.

Department of Agriculture and the Department of the Interior supervising the work in Civilian Conservation Corps camps and all other employees of the Government who come into regular contact with members of the Civilian Conservation Corps will be required to submit to vaccination against smallpox and to inoculation against typhoid. In cases in which any member or members of the group referred to in the preceding sentence refuse to submit to such vaccination or inoculation, the case will be referred to the corps area commander who will take it up with the corps area liaison officer. If correction of the situation cannot be obtained in this manner, the question will be referred to the War Department for decision with full report of the facts in each case.

(b) If smallpox or typhoid occurs at a camp, or if an epidemic of either of these diseases threatens, all personnel enumerated in (a) will be revaccinated or reinoculated against smallpox or typhoid, as the circumstances indicate, when, in the opinion of the commanding officer, on the advice of the medical officer or civilian physician, the procedure is considered necessary as a measure of protection against the spread of these diseases.

(c) Inoculation against typhoid fever will not be required for individuals who are more than 45 years of age, except as provided in (b).

(d) All individuals receiving typhoid vaccine will be excused from duty for a period of 24 hours after administration. Camp commanders will take the necessary steps to see that enrollees under their command who have severe reactions following the administration of vaccine are reported immediately to the camp surgeon for necessary care and treatment.

(e) If vaccination against smallpox does not result in a positive reaction (vaccinia, vaccinoid, or immune reaction), the result is unsuccessful and indicates that the vaccine was inert or the technique faulty. In this event, vaccination will be repeated promptly, either with new virus, if that previously used is suspected, or with improved technique until one of the positive reactions noted above has been produced.

(f) *Revaccination.* (1) All individuals referred to in (a) will be revaccinated against smallpox at intervals of 3 years, except as provided in (b).

(2) All individuals referred to in (a) will be reinoculated only once against typhoid fever after an interval of 3 years, subject to the modifications and exceptions prescribed in (b) and (c). (50 Stat. 319; 16 U.S.C., Sup., Chapter 3A) [Par. 23, C.C.C., Regs., W.D., Dec. 1, 1937, as amended by C 11, Aug. 16, 1938, and C 58, Sept. 19, 1940]

§ 203.7 *Enrollment.*

* * * * *

(c) *Action in case of fraudulent and erroneous enrollment.* (1) Upon discovering that a former enrollee who previously had been dismissed or had received an administrative or dishonorable discharge or an honorable discharge with the notation "Not considered worthy of reenrollment" or "Not qualified for reenrollment" has been reselected and enrolled, the company commander will immediately dismiss the enrollee for "erroneous enrollment."

* * * * *

(4) When the report of the State selecting agency reveals that the enrollee, as an applicant, actively and knowingly falsified or concealed information affecting his eligibility for selection and enrollment (see § 203.3 (a) (2)), the enrollee will be dismissed for "fraudulent enrollment." (50 Stat. 319; 16 U.S.C., Sup., Chapter 3A) [Par. 25, C.C.C. Regs., W.D., Dec. 1, 1937, as amended by C 58, Sept. 19, 1940]

* * * * *

§ 203.10a *Discharge*—(a) *Classes.* The three classes of separation from the Civilian Conservation Corps are—

(1) Honorable discharge (C.C.C. Form No. 2), given when service has been honest and faithful.

(2) Dismissal (C.C.C. Form No. 2–1), used when service has not been honest and faithful except in cases involving a felony or moral turpitude as indicated in (3).

(3) Dishonorable discharge (C.C.C. Form No. 2–2), given only in cases involving a felony or moral turpitude.

(b) *At request of enrollee.* An enrollee may be honorably discharged upon his request before the expiration of his term of service to permit him to accept employment that will improve his condition, including the position of foreman in Civilian Conservation Corps work, or to respond to urgent, proper calls for his continued presence elsewhere, or to return to a school or university for the purpose of continuing his education. The company commander will, if necessary, request the appropriate State selecting agency to investigate an enrollee's request for discharge prior to expiration of term of service in all cases where there is insufficient evidence to justify release without further investigation. The company commander will determine final disposition of each case, giving due consideration to the report and recommendation received from the State selecting agency.

(c) *Fraudulent or erroneous enrollment.* As provided in § 203.7 (c).

(d) *Physical or mental disability.* See § 203.22.

(e) *Physical disability due to own misconduct.* An enrollee who is discharged under the provisions of § 203.22 (a) (1) for physical disability resulting from venereal or other disease or injury contracted during his enrollment and due to his own misconduct will be dismissed.

(f) *Marriage.* Except as prescribed in § 203.2 (b), a junior enrollee who marries will be discharged at the end of the current enrollment period and will thereafter be ineligibe for reselection for enrollment. He will, however, be given an honorable discharge.

(g) *Convenience of the Government.* Any enrollee may be honorably discharged for the convenience of the Government within 30 days prior to the expiration of his period of enrollment. (50 Stat. 319; 16 U.S.C., Sup., Chapter 3A) [Par. 45, C.C.C. Regs., W.D., Dec. 1, 1937, as amended by C 58, Sept. 19, 1940]

§ 203.22 *Medical service*—(a) *Discharge for physical or mental disability.*

* * * * *

(5) When an enrollee who has become physically incapacitated for service refuses to accept medical or dental treatment considered necessary for the removal of the disability, he will be dismissed. Notation of the fact that he was discharged for refusal to accept treatment for the removal of the disability will be made on the dismissal certificate. (50 Stat. 319; 16 U.S.C., Sup., Chapter 3A) [Par. 116, C.C.C. Regs., W.D., Dec. 1, 1937, as amended by C 58, Sept. 19, 1940]

[SEAL] E. S. ADAMS,
Major General,
The Adjutant General.

[F. R. Doc. 40–4079; Filed, September 30, 1940; 2:36 p. m.]

Notices

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[General Docket No. 20]

IN THE MATTER OF MARKETING RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS AS ESTABLISHED BY THE DIVISION FOR DISTRICTS 1–20, INCLUSIVE, 22 AND 23; IN RE A PROPOSAL FOR REVIEW AND REVISION

NOTICE OF AND ORDER FOR HEARING

The Director of the Bituminous Coal Division having, on the 19th day of June, 1940, in General Docket No. 12,[1] established due and reasonable maximum discounts for Distributors and Rules and Regulations for the Registration of Distributors in accordance with the provisions of section 4, II, (h) of the Bituminous Coal Act of 1937, and having, on the 8th day of August, 1940, in General Docket No. 15,[2] established Marketing Rules and Regulations for the sale and distribution of coal by code members in all districts; and

The Director having reasonable cause to believe that producers who have heretofore been selling coal to distributors

[1] 5 F.R. 2359.
[2] 5 F.R. 2961, 3199, 3405.

whose compensation is regulated by the said Order establishing due and reasonable maximum discounts, are in the process of negotiating new and different contractual arrangements whereby such distributors would be designated as sales agents, with the intent and purpose of avoiding the restrictions on the compensation of and regulations applicable to such distributors as established by said Order in General Docket No. 12 dated August 8, 1940; and

The Director of the Bituminous Coal Division being of the opinion that it is reasonable and necessary for the proper administration of the Bituminous Coal Act of 1937, with particular reference to the provisions of sections 4, II, (h) and 4, II, (i), that, pursuant to the authority conferred by the last sentence of section 4, II, (b) of said Act, the Marketing Rules and Regulations established by the Director on August 8, 1940, be revised and amended by adding thereto the proposed Rule attached hereto and marked "Exhibit 'A' "; and

The Director being desirous of receiving evidence relating to the reasonableness of and the necessity for the proposed rule,

It is therefore ordered, That on October 14, 1940, at 10 o'clock in the forenoon of that day, at a hearing room of the Bituminous Coal Division, 734 15th Street, Northwest, Washington, D. C., a hearing will be held at which evidence will be received relating to the reasonableness of and the necessity for the revision and amendment of the Marketing Rules and Regulations as provided in the proposed Rule. On such day the Chief of the Records Section in Room 502 will advise as to the room where such hearing will be held.

It is further ordered, That W. A. Shipman or any other officer or officers of the Bituminous Coal Division designated by the Director thereof for that purpose shall preside at the hearing in such matter. The officers so designated to preside at such hearing are hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, to continue said hearing from time to time, and to prepare and submit to the Director proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to all persons who may have an interest in the subject matter thereof. Any person desiring to be heard at such hearing shall file a notice to that effect on or before October 11, 1940, setting forth therein the notice of his interest and a concise statement of the matter he intends to present.

All persons are further notified that the hearing in the above-entitled matter and any Orders therein, may concern, in addition to the matters specifically stated in the proposed Rule annexed hereto as Exhibit "A", other matters necessarily incidental and related thereto, which may be raised by the amendment of said proposed Rule, petitions of interested parties or otherwise, or which may be necessary corollaries to the proposed revision and amendment of Section II of the Marketing Rules and Regulations.

Dated, September 30, 1940.

[SEAL] H. A. GRAY,
Director.

Exhibit A

PROPOSED SECTION II, RULE 13 OF THE MARKETING RULES AND REGULATIONS

PROPOSED AMENDMENT OF THE MARKETING RULES AND REGULATIONS SO AS TO ADD THERETO SECTION II, RULE 13, PROVIDING THAT CODE MEMBERS MUST APPLY FOR APPROVAL OF CERTAIN CONTRACTS APPOINTING SALES AGENTS ENTERED INTO SUBSEQUENT TO A CERTAIN DATE

Section II, Rule 13:

From and after the _____ day of _____, 1940, no code member shall allow or pay, directly or indirectly, any commission to any sales agent pursuant to any contract appointing such sales agent entered into subsequent to the 8th day of August 1940, in excess of the maximum discount which would be allowable to such sales agent under the schedule of due and reasonable maximum discounts for distributors, as established by the Director pursuant to the provisions of section 4, II, (h) of the Act, if such sales agent were handling coals produced by such code member as a distributor, unless the code member shall have filed with the Bituminous Coal Division an application for permission to pay such commission. Such permission will be granted by the Division upon a showing that the contract is a bona fide sales agency contract and was entered into in good faith and not for the purpose of evading the maximum discounts and rules and regulations for the registration of distributors, the unfair methods of competition established by section 4, II, (i) of the Act, particularly paragraph 13 thereof, the Marketing Rules and Regulations and other regulations and orders of the Director.

No code member shall allow or pay, directly or indirectly, any commission pursuant to a modification subsequent to August 8, 1940, of any contract appointing a sales agent which provides for a commission in excess of the commission specified in such contract, unless the code member shall have filed with the Bituminous Coal Division an application for permission to pay such increased commission. Such permission will be granted by the Division upon a showing that the modification of such contract is bona fide and was entered into in good faith and not for the purpose of evading the maximum discounts and rules and regulations for the registration of distributors, the unfair methods of competition established by section 4, II, (i) of the Act, particularly paragraph 13 thereof, the Marketing Rules and Regulations and other regulations and orders of the Director.

[F. R. Doc. 40-4101; Filed, October 1, 1940; 11:58 a. m.]

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

[SRB-401-Fla. Celery, Supp. 2]

1940 AGRICULTURAL CONSERVATION PROGRAM FOR THE FLORIDA CELERY AREA

SOUTHERN REGION BULLETIN 401

Supplement 2

Pursuant to the authority vested in the Secretary of Agriculture under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, as amended, the 1940 Agricultural Conservation Program for the Florida Celery Area, Southern Region Bulletin 401, is further amended as follows:

(1) Section 2, subsection (a) is amended by changing the last sentence to read as follows: "Total soil-depleting allotments will be determined for all farms on which general crops or livestock are produced for market, and for which a celery, tobacco, peanut, or potato acreage allotment is determined."

(2) Section 2 is amended by changing the designation of subsection (f) to subsection (g) and by adding a new subsection (f) as follows:

(f) *Peanut allotment.* In Marion County, designated as a commercial peanut-producing county, peanut acreage allotments shall be determined on the basis of the acreage of peanuts for market customarily grown and the tillable acreage on the farm, taking into consideration other special crop acreage allotments determined for the farm.

(3) Section 3 is amended to read as follows:

SEC. 3. *Normal yields.* The county committee, with the assistance of other local committees, shall determine for each farm for which a tobacco, celery, peanut, or potato acreage allotment is determined a normal yield for each such crop in accordance with the provisions of this section and instructions issued by the Agricultural Adjustment Administration. The normal yield of tobacco, celery, peanuts, or potatoes, as the case may be, for any farm shall be the yield which may reasonably be expected from the land devoted to the production of the crop in 1940, with due consideration for type of soil, production practices, general fertility of the land, and the yield of such crop customarily made on the farm. The average yield for all farms in any county with respect to any such crop shall not exceed the county average yield for the crop established by the Secretary.

(4) Section 5 is amended by changing the designation of subsection (e) to sub-

section (f) and by changing paragraph (2) thereof to read as follows:

(2) *63 cents*[1] per acre of cropland in any farm in excess of the sum of (i) the acreages used in computing payments with respect to the tobacco, celery, peanut, or potato acreage allotments determined for the farm, and (ii) the acreage of sugarcane for sugar grown on the farm in 1940.

(5) Section 5 is amended by adding a new subsection (e) as follows:

(e) *Peanuts. 11¼ cents*[1] for each 100 pounds of the normal yield for each acre in the peanut allotment.

(6) Section 6 is amended by changing the designation of subsection (f) to subsection (g) and by adding a new subsection (f) as follows:

(f) *Peanuts. $1.35*[1] for each 100 pounds of the normal yield for the farm for each acre of peanuts for market in excess of the peanut acreage allotment determined for the farm.

(7) Section 7, subsection (a) (1) is amended to read as follows:

(a) *Payments and deductions in connection with acreage allotments.* (1) The net payment or net deduction computed for any farm with respect to the tobacco, celery, commercial vegetable, peanut, or potato acreage allotment or general soil-depleting crops shall be divided among the landlords, tenants, and sharecroppers in the proportion (as indicated by their acreage shares) that such persons are entitled, as of the time of harvest, to share in the proceeds (other than a fixed commodity payment) of the tobacco, potatoes in Palm Beach County, peanuts in Marion County, general crops, celery, or commercial vegetables, respectively, grown on the farm in 1940: *Provided*, That if any such crop is not grown on the farm in 1940 or the acreage of such crop is substantially reduced by flood, hail, drought, insects, or plant-bed diseases, the net payment or net deduction computed for such crops shall be divided among the landlords, tenants, and sharecroppers in the proportion that the county committee determines such persons would have been entitled to share in the proceeds of such crop if the entire acreage in the acreage allotment for such crop had been planted and harvested in 1940.

(8) Section 12, as amended, is further amended to read as follows:

SEC. 12. *Materials furnished as grants of aid.* Wherever it is found practicable, limestone, superphosphate, trees, seeds, and other farming materials, upon request of the producer, may be furnished by the Agricultural Adjustment Administration as grants of aid to be used in carrying out soil-building practices approved for the farm as practices which may be counted toward meeting the soil-building goal for the farm.

Wherever such material is furnished, a deduction shall be made in an amount determined by the Agricultural Adjustment Administration on the basis approved by the Secretary. Such deduction shall be applied first to the payment computed with respect to the same or any other farm in the county for the person to whom such material is furnished and the balance of such deduction, if any, shall be prorated among the payments to the other persons sharing in the payment with respect to the farm for which such material was obtained.

Materials shall be furnished only pursuant to a producer's request and agreement upon Form ACP–64. In the event the amount of deduction for materials exceeds the amount of the payment subject to deduction, the amount of such difference shall be paid by the producer to the Secretary, except that if proper use of all of the material has been made, only that part of such difference not due to changes in the rates of payment shall be so paid. If the producer uses any such material in a manner which is not in substantial accord with the purpose for which such material was furnished, an additional deduction for the material misused equal to the amount of the original deduction for such material shall be made to compensate the Government for damages because of such misuse, such damages to be deducted from the payments computed for the grantee with respect to any farm in which he has an interest, any remaining deficit to be paid by the producer to the Secretary, provided that deduction for any deficit will be made insofar as possible from payments computed for other persons on the farm with respect to which such material was furnished. The finding of the county committee that the material has been used in a manner which is not in substantial accord with the purpose for which it was furnished, and as to the amount of the material so misused, shall be final when approved by the State committee, subject to the right of appeal under the provisions of Sec. 15.

(9) Section 17 is amended by adding item (7) under "Crops and land uses" as follows:

(7) *Peanuts for market* means all peanuts harvested for nuts on any farm on which any peanuts are separated from the vines by mechanical means and sold to persons not living on the farm.

Done at Washington, D. C., this 1st day of October, 1940. Witness my hand and the seal of the Department of Agriculture.

[SEAL] PAUL H. APPLEBY,
Acting Secretary of Agriculture.

[F. R. Doc. 40–4095; Filed, October 1, 1940; 11:56 a. m.]

[1] The rates of payment and deduction originally announced were reduced by 10 percent by the Secretary of Agriculture in his order of July 19, 1940, pursuant to section 1 (b) hereof. The above rates reflect that 10 percent reduction, and will not be further affected by such order.

[ACP–115, Supp. 1[1]]

PROCEDURE GOVERNING THE HANDLING OF CASES INVOLVING OVERPAYMENTS UNDER ANY PROGRAM ADMINISTERED THROUGH THE AGRICULTURAL ADJUSTMENT ADMINISTRATION

By virtue of the provisions of section 9 of Public No. 716, 76th Congress, approved July 2, 1940, ACP–115 is hereby amended and supplemented as follows, and any part of ACP–115 which is in conflict with the following is hereby amended accordingly:

1. Where a check issued pursuant to section 8 of the Agricultural Adjustment Act of 1933, the item entitled "Payments for Agricultural Adjustment" contained in the Supplemental Appropriation Act, fiscal year 1936, as amended, or pursuant to the 1939 or prior Agricultural Conservation Programs, was delivered to the payee on or before July 1, 1940, and all or a part of the proceeds of such check was earned by a second person by virtue of his having in good faith contributed to the rendering of performance for which the check was issued, and the payee,

(a) On or before July 1, 1940, turned over to the second person all or a part of the proceeds of the check so earned by the second person, such second person is entitled to retain the amount received irrespective of whether such second person filed a timely application therefor, provided there has been or is filed with the appropriate certifying officer of the Agricultural Adjustment Administration acceptable evidence, as defined in paragraph 3 below, that such private settlement has been made.

(b) Refunded or refunds to the United States all or a part of the proceeds of such check so earned by the second person or such amount has been or is set off against a subsequent payment due such first person, the second person shall be entitled to receive the amount so recovered by the United States irrespective of whether such person has filed a timely application for payment, provided such second person has made or makes application therefor.

2. Where a check issued pursuant to any program administered or hereafter administered by the Agricultural Adjustment Administration was or is delivered to the payee on or after July 2, 1940, and it appears that all or a part of the proceeds thereof was earned by another person under the program pursuant to which the check was issued, the procedure set forth in ACF–115 shall be followed.

3. The term "acceptable evidence" as used above shall be evidence reasonably establishing the fact that a settlement has been made. Where possible it shall consist of a written statement signed by the person to whom the money was turned over, acknowledging receipt of the amount in question from the first

[1] 5 F.R. 280.

person, and showing the approximate date of the settlement or the exact date thereof if the settlement was made on or approximately July 1, 1940. If, however, such statement cannot be obtained, a statement of the facts surrounding the transaction from any person having personal knowledge of such settlement, other than the person who turned over the money, shall be acceptable. In the latter event a statement approved by a member of the county committee shall be submitted setting forth the reason a statement was not submitted by the person to whom the money was turned over.

4. Section V C (1) is revised to read as follows:

"(1) so advise the Regional Director in writing, who shall take steps necessary to make a charge on the Register of Indebtedness in the State Office against the person receiving the overpayment for the full amount of the payment received by him for the farm with respect to which it is determined that there was fraudulent conduct."

Done at Washington, D. C., this 1st day of October, 1940. Witness my hand and the seal of the Department of Agriculture.

[SEAL] PAUL H. APPLEBY,
Acting Secretary of Agriculture.

[F. R. Doc. 40-4096; Filed, October 1, 1940; 11:57 a. m.]

Rural Electrification Administration.

[Administrative Order No. 519]

ALLOCATION OF FUNDS FOR LOANS

SEPTEMBER 24, 1940.

Pursuant to section 3 (c) of the Rural Electrification Act of 1936 and upon information and data in the files of the Rural Electrification Administration, I hereby determine that the number of farms not receiving central station electric service for each state and the number of such farms for the United States at the beginning of the current fiscal year are set forth in the following schedule, and I hereby allot from the sum of $50,000,000, being fifty per centum of the total sum made available for the current fiscal year, the respective sums for loans in the several States as hereinafter set forth.

	Farms without central station electric service July 1, 1940	Allotment for loans during the fiscal year ending June 30, 1941
United States	5,030,099	$50,000,000
Alabama	245,180	2,437,129
Arizona	11,373	113,050
Arkansas	238,981	2,375,509
California	41,602	413,531
Colorado	46,764	464,842
Connecticut	18,042	179,341
Delaware	6,675	66,351
Florida	70,956	705,314
Georgia	205,931	2,046,988
Idaho	19,724	196,060
Illinois	150,901	1,499,980
Indiana	110,152	1,094,929
Iowa	152,392	1,514,801
Kansas	137,749	1,369,247
Kentucky	265,219	2,636,320
Louisiana	161,097	1,601,330
Maine	24,795	246,466
Maryland	27,607	274,418
Massachusetts	19,192	190,772
Michigan	59,731	593,736
Minnesota	152,549	1,516,361
Mississippi	297,476	2,956,960
Missouri	240,089	2,386,523
Montana	33,256	330,570
Nebraska	99,811	992,138
Nevada	2,384	23,698
New Hampshire	8,926	88,726
New Jersey	6,817	67,762
New Mexico	38,412	381,822
New York	80,075	795,958
North Carolina	241,226	2,397,825
North Dakota	68,100	676,925
Ohio	123,396	1,226,576
Oklahoma	188,775	1,876,454
Oregon	37,307	370,838
Pennsylvania	89,210	886,762
Rhode Island	277	2,754
South Carolina	135,552	1,347,409
South Dakota	68,795	683,834
Tennessee	259,016	2,574,661
Texas	411,085	4,086,251
Utah	13,419	133,387
Vermont	17,740	176,338
Virginia	149,182	1,482,893
Washington	31,310	311,226
West Virginia	92,883	923,272
Wisconsin	116,478	1,157,810
Wyoming	12,490	124,153

[SEAL] HARRY SLATTERY,
Administrator.

[F. R. Doc. 40-4100; Filed, October 1, 1940; 11:58 a. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

NOTICE OF HEARING TO DETERMINE REASONABLE COST TO ATLANTA, BIRMINGHAM AND COAST RAILROAD OF BOARD, LODGING, OR OTHER FACILITIES, CUSTOMARILY FURNISHED TO EMPLOYEES OF THE ATLANTA, BIRMINGHAM AND COAST RAILROAD

Whereas section 3 (m) of the Fair Labor Standards Act of 1938 provides that "'Wage' paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees," and

Whereas the Administrator of the Wage and Hour Division, pursuant to the authority contained in section 3 (m) of the Fair Labor Standards Act of 1938, issued Regulations Determining the Reasonable Cost of Board, Lodging, and other Facilities, pursuant to Section 3 (m) of the Fair Labor Standards Act of 1938, Regulations, Part 531, as amended,[1] Title 29, Chapter V, Code of Federal Regulations, providing that a hearing may be held on application of an employer to determine such "reasonable cost;" and

[1] 5 F.R. 3633.

Whereas an application has been filed by the Atlanta, Birmingham and Coast Railroad Company of Atlanta, Georgia, pursuant to § 531.2[2] of the said regulations requesting a hearing to be held by the Administrator of the Wage and Hour Division or his duly authorized representative to determine the reasonable cost to the Atlanta, Birmingham and Coast Railroad Company of the board, lodging, or other facilities, customarily furnished to the employees of the Atlanta, Birmingham and Coast Railroad Company.

Now, therefore, notice is hereby given that a public hearing will be held pursuant to § 531.2 of the said regulations on October 17, 1940, at 10:00 a. m. at the Ansley Hotel, Atlanta, Georgia, before Harold Stein, the presiding officer hereby designated as the authorized representative of the Administrator, at which the testimony of interested persons will be taken and pertinent data received to determine the reasonable cost to the Atlanta, Birmingham and Coast Railroad Company of board, lodging, or other facilities, customarily furnished by said railroad to its employees.

Notices of intention to appear should be filed with James G. Johnson, Acting Regional Director, 314 Witt Building, 249 Peachtree Street, Atlanta, Georgia, not later than October 16, 1940.

The designated presiding officer is hereby authorized to hear and determine the reasonable cost to the applicant of customarily furnishing board, lodging, or other facilities to its employees.

Upon the publication of this notice the Atlanta, Birmingham and Coast Railroad Company, pursuant to the provisions of § 531.2 of the said regulations, shall notify its employees of the place, date and purpose of the hearing hereby announced by posting notices thereof in conspicuous places on its premises.

Signed at Washington, D. C., this 30th day of September 1940.

BAIRD SNYDER,
Acting Administrator.

[F. R. Doc. 40-4087; Filed, October 1, 1940; 11:20 a. m.]

FEDERAL POWER COMMISSION.

[Docket Nos. G-144, G-145, G-146, G-147, G-181]

IN THE MATTER OF UNITED GAS PIPE LINE COMPANY, SOUTHERN CARBON COMPANY, INTERSTATE NATURAL GAS COMPANY, INCORPORATED, AND HOPE PRODUCING COMPANY, UNITED CARBON COMPANY, MISSISSIPPI RIVER FUEL CORPORATION

ORDER CONTINUING DATE OF HEARING

SEPTEMBER 27, 1940.

It appearing to the Commission that:

(a) By order of August 8, 1940,[1] the Commission directed that a public hearing in these proceedings be held on Octo-

[1] 5 F.R. 2866.
[2] 3 F.R. 2535.

ber 7, 1940, at 10 o'clock, a. m., in the hearing room of the Federal Power Commission, Hurley-Wright Building, 1800 Pennsylvania Avenue NW., Washington, D. C., and also directed that such proceedings be consolidated for the purposes of such hearing;

(b) On September 18, 1940, Counsel for the Interstate Natural Gas Company, Incorporated, and Hope Producing Company filed a petition requesting a continuance of the date for said hearing;

(c) Good cause has been shown for granting such continuance;

The Commission orders that the date of the public hearing in these proceedings, now fixed for October 7, 1940, be and it is hereby continued until October 30, 1940, at the same hour and place heretofore designated.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 40-4086; Filed, October 1, 1940; 9:54 a. m.]

FEDERAL SECURITY AGENCY.

Food and Drug Administration.

[Docket No. FDC-11]

PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH REGULATIONS MAY BE PROMULGATED FIXING AND ESTABLISHING DEFINITIONS AND STANDARDS OF IDENTITY FOR (A) CHEDDAR CHEESE, (B) WASHED CURD CHEESE, AND (C) COLBY CHEESE

By virtue of the authority vested in the Federal Security Administrator by the provisions of section 401 of the Federal Food, Drug, and Cosmetic Act [Sec. 401, 52 Stat. 1046; 21 U.S.C., Sup. V, 341], of the Reorganization Act of 1939 [53 Stat. 561, ff.; 5 U.S.C., Sup. V, 133, ff.] and of Reorganization Plan No. IV [5 F.R. 2421], and upon the basis of the evidence received at the above-entitled hearing, duly held pursuant to notice thereof issued by the Secretary of Agriculture on August 21, 1939,[1] it is proposed that the following facts be found and that the promulgation of the regulation hereinafter set forth be ordered:

Proposed Findings of Fact

1. The food commonly known as cheddar cheese is prepared from cows' milk (R. pp. 29–30, 119, 198–199) by the following process:

Milk, which may be pasteurized and which may be warmed when necessary, is subjected to the action of harmless lactic-acid-producing bacteria, present in such milk or added thereto. Harmless artificial coloring may be added. Sufficient rennet is then added to cause setting to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote the separation of whey and curd. The whey is drained off and the curd is matted into a cohesive mass. The mass of the curd is cut into slabs which are so piled and handled as to promote the drainage of whey and the development of acidity. The slabs of the curd are then cut into pieces, which may be rinsed by springling or pouring water over them, with free and continuous drainage; but the duration of such rinsing is so limited that only the whey on the surface of such pieces is removed. The curd is salted, stirred, further drained, and pressed into forms. (R. pp. 37–45, 119–127, 200–221, 397, 421, 425, 465–466, 482, 504)

2. The term "cheese", unqualified, when used by consumers and in the trade, means cheddar cheese. (R. pp. 46, 392–393, 398–400, 492–493)

3. The food commonly known as washed curd cheese is prepared from cows' milk (R. pp. 29–30, 119, 198–199) by the following process:

Milk, which may be pasteurized and which may be warmed when necessary, is subjected to the action of harmless lactic-acid-producing bacteria, present in such milk or added thereto. Harmless artificial coloring may be added. Sufficient rennet is then added to cause setting to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote the separation of whey and curd. The whey is drained off and the curd is matted into a cohesive mass. The mass of curd is cut into slabs which are so piled and handled as to promote the drainage of whey and the development of acidity. The slabs of curd are then cut into pieces, cooled in water, and soaked therein until the whey is partly extracted and water is absorbed. The curd is drained, salted, stirred, and pressed into forms. (R. pp. 37–45, 130–131, 200–220, 397, 421, 425, 465–466, 482, 504)

4. Washed curd cheese is also known as "soaked curd cheese". (R. pp. 47, 130)

5. The food commonly known as colby cheese is prepared from cows' milk (R. pp. 29–30, 119, 198–199) by the following process:

Milk, which may be pasteurized and which may be warmed when necessary, is subjected to the action of harmless lactic-acid-producing bacteria, present in such milk or added thereto. Harmless artificial coloring may be added. Sufficient rennet is then added to cause setting to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote the separation of whey and curd. A part of the whey is drained off and the curd is cooled by adding water, the stirring being continued so as to prevent the pieces of curd from matting. The curd is drained, salted, stirred, further drained, and pressed into forms. (R. pp. 37–45, 131–133, 200–214, 397, 421, 425, 465–466, 482, 504)

6. The term "American Cheese" is sometimes used to identify the class of food consisting of cheddar cheese, washed curd cheese, and colby cheese, but when the word "American" is so used it also denotes the geographic origin of such cheese as the United States. (R. pp. 336–337, 393, 433–434, 456, 470–471, 494, 496, 509–511)

7. Cheddar cheese is made in some foreign countries as well as in the United States; the identity of foreign-made cheddar cheese, which is never designated "American Cheese", is the same as the identity of cheddar cheese made in the United States. (R. pp. 434, 437, 442, 493–494, 509–511)

8. The factors upon the basis of which cheddar cheese, washed curd cheese, and colby cheese are differentiated one from another are factors which arise from and are controlled by the methods of manufacture. (R. pp. 35–37, 45–46, 209, 225–227)

9. Cheddar cheese, washed curd cheese, and colby cheese prepared from cows' milk of average composition contain not less than 50 percent milk fat on a dry basis. (R. pp. 52–54, 164–165, 228–230, 247, 350)

10. The fat and other constituents of cows' milk vary with the different breeds of cows and other factors; in order to make cheddar cheese, washed curd cheese, and colby cheese, of relatively uniform compositions, and at relatively uniform costs of production, the milk used is often adjusted by separating part of the fat therefrom or by adding thereto cream or sweet skim milk. (R. pp. 48–49, 119–121, 230–231, 383–390, 425–427, 482)

11. The moisture content of cheddar cheese, washed curd cheese, and colby cheese is one of the factors which affects texture, and, indirectly, taste and odor, all of which have a part in the identifying of such articles. (R. pp. 33, 55, 72, 89–90, 166–168, 223, 231–240, 430, 484)

12. Cheddar cheese contains not more than 39 percent of moisture. (R. pp. 54–55, 166, 231–234, 236, 331, 391, 428, 466, 483–484, 504)

13. Washed curd cheese contains not more than 42 percent of moisture. (R. pp. 55–56, 166–167, 235, 331, 391, 429, 466–468, 484, 504–505)

14. Colby cheese contains not more than 40 percent of moisture. (R. pp. 56, 168, 234, 331, 391–392, 430–431, 485–486, 505)

15. The quantity of moisture in cheddar cheese, washed curd cheese, and colby cheese is determined by following the methods of analysis prescribed on page 291 under the title "Moisture—Official" and the quantity of fat in each such variety of cheese is determined by following the methods of analysis prescribed on page 291 under the title "Fat—Official", of the publication entitled "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists", Fourth Edition, 1935, a publication

[1] 4 F.R. 3683.

commonly known by and readily available to chemists generally; such methods are accepted by chemists as practical methods whereby the moisture and fat content of cheese can be determined with a reasonable degree of accuracy. (R. pp. 57–59, 129)

Proposed Regulations

§ 19.500 *Cheddar cheese, cheese—Identity.* (a) Cheddar cheese, cheese, is the food prepared from milk by the procedure set forth in subsection (b). It contains not more than 39 percent of moisture, and its solids contain not less than 50 percent of milk fat, as determined by the methods prescribed in subsection (c).

(b) Milk, which may be pasteurized and which may be warmed, is subjected to the action of harmless lactic-acid-producing bacteria present in such milk or added thereto. Harmless artificial coloring may be added. Sufficient rennet is added to set the milk to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote the separation of whey and curd. The whey is drained off and the curd is matted into a cohesive mass. The mass is cut into slabs which are so piled and handled as to promote the drainage of whey and the development of acidity. The slabs are then cut into pieces, which may be rinsed by sprinkling or pouring water over them, with free and continuous drainage; but the duration of such rinsing is so limited that only the whey on the surface of such pieces is removed. The curd is salted, stirred, further drained, and pressed into forms.

(c) Determine moisture by the method prescribed on page 291 under "Moisture—Official", and milk fat by the method prescribed on page 291 under "Fat—Official", of "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists", Fourth Edition, 1935. Subtract the percent of moisture found from 100; divide the remainder into the percent of milk fat found; the quotient multiplied by 100 shall be considered to be the percent of milk fat contained in the solids.

(d) For the purposes of this section—

(1) The word "milk" means cows' milk.

(2) Such milk may be adusted by the separation of part of the fat therefrom or the addition thereto of cream or sweet skim milk.

§ 19.505 *Washed Curd Cheese, Soaked Curd Cheese—Identity.* (a) Washed curd cheese, soaked curd cheese, is the food prepared from milk by the procedure set forth in subsection (b). It contains not more than 42 percent of moisture, and its solids contain not less than 50 percent of milk fat, as determined by the methods prescribed in subsection (c) of §19.500.

(b) Milk, which may be pasteurized and which may be warmed, is subjected to the action of harmless lactic-acid-producing bacteria present in such milk or added thereto. Harmless artificial coloring may be added. Sufficient rennet is added to set the milk to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote the separation of whey and curd. The whey is drained off and the curd is matted into a cohesive mass. The mass is cut into slabs which are so piled and handled as to promote the drainage of whey and the development of acidity. The slabs are then cut into pieces, cooled in water, and soaked therein until the whey is partly extracted and water is absorbed. The curd is drained, salted, stirred, and pressed into forms.

(c) For the purposes of this section—

(1) The word "Milk" means cows' milk.

(2) Such milk may be adjusted by the separation of part of the fat therefrom or the addition thereto of cream or sweet skim milk.

§ 19.510 *Colby Cheese—Identity.* (a) Colby cheese is the food prepared from milk by the procedure set forth in subsection (b). It contains not more than 40 percent of moisture, and its solids contain not less than 50 percent of milk fat, as determined by the methods prescribed in subsection (c) of § 19.500.

(b) Milk, which may be pasteurized and which may be warmed, is subjected to the action of harmless lactic-acid-producing bacteria present in such milk or added thereto. Harmless artificial coloring may be added. Sufficient rennet is added to set the milk to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote the separation of whey and curd. A part of the whey is drained off and the curd is cooled by adding water, the stirring being continued so as to prevent the pieces of curd from matting. The curd is drained, salted, stirred, further drained, and pressed into forms.

(c) For the purposes of this section—

(1) The word "milk" means cows' milk.

(2) Such milk may be adjusted by the separation of part of the fat therefrom or the addition thereto of cream or sweet skim milk.

Any interested person whose appearance was filed at the hearing may, within 10 days from the date of the publication of this proposed order in the FEDERAL REGISTER, file with the Hearing Clerk of the Federal Security Agency, Office of the Assistant General Counsel, Room 2240, South Building, 14th Street and Independence Avenue, Washington, D. C., exceptions to this proposed order. Exceptions shall point out with particularity the alleged errors in the proposed order, and shall contain a specific reference to the page of the transcript of the testimony or to the exhibit on which each exception is based. Such exceptions may be accompanied with a memorandum brief in support thereof.

WAYNE COY,
Acting Federal Security Administrator.

SEPTEMBER 28, 1940.

[F. R. Doc. 40–4080; Filed, September 30, 1940; 3:03 p. m.]

[Docket No. FDC–12]

PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH REGULATIONS MAY BE PROMULGATED FIXING AND ESTABLISHING A DEFINITION AND STANDARD OF IDENTITY FOR CREAM CHEESE

By virtue of the authority vested in the Federal Security Administrator by the provisions of Section 401 of the Federal Food, Drug, and Cosmetic Act [Sec. 401, 52 Stat. 1046; 21 U.S.C., Sup. V, 341], of the Reorganization Act of 1939 [53 Stat. 561, ff.; 5 U.S.C., Sup. V, 133, ff.] and of Reorganization Plan No. IV [5 F.R. 2421], and upon the basis of the evidence received at the above-entitled hearing, duly held pursuant to notice thereof isued by the Secretary of Agriculture on August 18, 1939,[1] it is proposed that the following facts be found and that the promulgation of the regulation hereinafter set forth be ordered:

Proposed Findings of Fact

1. That the food product commonly and usually known as "cream cheese" is one of several kinds of soft cheese. (R. p. 63, 139, 230, 232, 660–661, 683, 743, 770)

2. That cream cheese is distinguished from other soft cheeses by its characteristic taste, smell, feel, and appearance, and by its characteristic milk fat and moisture content. (R. p. 93–94, 139–140, 148–149, 156–157, 232–233, 246, 272, 681, 746, 924–925, 940–941)

3. That the characteristic taste, smell, feel, and appearance of cream cheese are derived from the method and materials characteristically used in its preparation, and from the milk fat and moisture content characteristically resulting therefrom. (R. p. 49, 62, 93–94, 139–140, 149–151, 155, 233–234, 242–244, 246, 259–261, 659–662, 681–682, 703–704, 757, 797, 800, 928–929, 940–941, 948)

4. That cream cheese was made in the early days of its manufacture from cream; and, in later times, from cream or from a mixture of cream and milk. (R. p. 133–135, 156, 646)

5. That cream cheese is made today from cream, or from a mixture of cream and either milk or skim milk, or both. (R. p. 29, 141, 155, 984)

6. That the cream or the mixture used in the preparation of cream cheese is always pasteurized. (R. p. 29, 141, 155, 183, 189, 234, 731)

7. That the cream or the mixture used in the preparation of cream cheese is

[1] 4 F.R. 3683.

sometimes homogenized. (R. p. 29, 74, 141, 234, 731)

8. That, in essence, the process by which cream cheese is made consists of the holding of the cream or mixture, at a suitable temperature, for souring and coagulation through the development of lactic acid, and of the drainage of the whey from the curd. (R. p. 29–30, 93, 141–142, 234–238)

9. That in the preparation of cream cheese lactic acid is produced by the action of harmless lactic-acid-producing bacteria which are added to the cream or mixture by means of a culture known as a starter. (R. p. 29, 141–142, 235, 668, 680, 704, 731, 801)

10. That in the preparation of cream cheese a small quantity of rennet is sometimes added, with the starter, to produce a firmer curd. (R. p. 29, 141, 235, 248, 774, 779)

11. That heat is sometimes applied to facilitate the separation of curd and whey. (R. p. 142, 236–237)

12. That pressure is sometimes applied to facilitate the drainage of whey and, during drainage, the curd is sometimes chilled. (R. p. 30, 142, 238)

13. That salt is used in the preparation of cream cheese. (R. p. 29, 142, 238, 779)

14. That all cream cheese leaks moisture to some extent. (R. p. 75, 226, 259, 884–885)

15. That any perceptible leakage of moisture from cream cheese is undesirable, renders the cheese unattractive, and creates problems in merchandising. (R. p. 153, 193, 227, 259, 270, 273, 277, 351, 373–374, 885, 984–985)

16. That about 1927 it was discovered that the use of certain harmless vegetable gums in the preparation of cream cheese would prevent perceptible leakage of moisture, and that gum was first used, and is used today by some manufacturers, for this purpose. (R. p. 193, 226, 374, 626, 752, 754–755, 790, 799, 819–821, 833–834, 884)

17. That the gums used in cream cheese to prevent leakage of moisture are the following vegetable gums: carob or locust bean gum, karaya gum, and gum tragacanth. (R. p. 31, 153, 239, 774–775, 790–791, 821)

18. That gelatin is sometimes used in cream cheese to prevent leakage of moisture. (R. p. 31, 45, 68, 76, 142, 154, 209, 240, 244)

19. That when used in cream cheese the amount of gum and gelatin in the cheese does not exceed 0.5% by weight of the finished product. (R. p. 206–207, 885, 984, 1027)

20. That, following the discovery of the use of gum, it was discovered that cream cheese could be subjected to an additional process of heating usually followed by homogenization of the heated curd. (R. p. 31, 74, 138, 142, 238–240, 790, 834)

21. That the discovery and use of this additional process led to the use in the industry of the terms "cold-pack", to designate the cheese made without the application of the additional process, and "hot-pack", to designate the cheese made with the application of the additional process. (R. p. 28, 138, 238–239, 241)

22. That cream cheese prepared by the "hot-pack" process has better keeping qualities than cream cheese prepared by the "cold-pack" process and lends itself to different forms of packaging. (R. p. 31, 69–71, 117, 239, 654, 987)

23. That the "hot-pack" process is sometimes used in the preparation of cream cheese. (R. p. 28, 30, 141–142, 239, 651–652, 908)

24. That cream cheese is not subjected to curing. (R. p. 63, 86, 117, 661, 682–683, 741–770)

25. That cream cheese is associated in the mind of the consumer with a product made from cream and having the richness of a product so made. (R. p. 157, 160, 170, 197, 223, 242, 246, 1053)

26. That, when cream containing 18% or more of milk fat and proper methods are used in its preparation, cream cheese contains not less than 34% milk fat and not more than 55% moisture. (R. p. 150–151, 158, 163, 242–244, 261–263)

27. That cream cheese containing more than 34% milk fat and less than 55% moisture can be made from a mixture of cream and either milk or skim milk, or both, if the components of the mixture are mixed in proper proportions and the whey is properly drained from the curd. (R. p. 150–151, 155, 158, 164)

28. That, following the discovery of the moisture retaining properties of gum and the development of the "hot-pack" process, the use of gum and the "hot-pack" process was gradually extended by some manufacturers of cream cheese to hold excess moisture, to increase yield, and to simulate in a cheese of lower fat and higher moisture content the smoothness and dryness of cream cheese. (R. p. 46–47, 75, 91, 156, 245, 281–282, 613, 626, 638, 653, 656, 771, 793, 799, 821–822, 834–835)

29. That the use of gum and the "hot-pack" process for the purposes described in Finding No. 28 resulted in the development of a cheese containing a percentage of milk fat ranging between 23% and 30%, and a percentage of moisture ranging between 57% and 65%. (R. p. 156, 290, 295, 311, 335, 337, 346, 350, 361, 372, 588, 621, 653, 672, 718–719, 766, 792–793, 798, 880, 907–908, 927, 930, 954, 1012, Govt. Exhibit No. 2)

30. That the cheese referred to in Finding No. 29 has been sold in some parts of the country, principally in and around the large cities, as cream cheese. (R. p. 312–313, 345, 354–355, 378, 611, 778, 815, 861, 863, 946, 951, 979, 1020, 1037–1038)

31. That the cheese referred to in Finding No. 29 is recognized in the industry as a distinct type of cheese, and is distinguished in the industry from cream cheese of higher fat and lower moisture by the use of the terms "low test", "cheap", and "second grade" cream cheese. (R. p. 288, 295, 337, 361, 386, 588, 683–684, 744, 930, 1027)

32. That the "low test" cheese was developed in an effort by some manufacturers to compete with others in the sale of cream cheese, and is now made, for competitive reasons, by all or substantially all manufacturers of cream cheese. (R. p. 288–290, 306, 330, 348, 352, 386–387, 588, 601, 613, 656, 718, 737, 767, 897, 946, 964, 981–983, 989, 1012)

33. That the "low test" cheese is usually made by the "hot-pack" process with gum and cannot be made successfully without the use of gum. (R. p. 46, 183–184, 243, 261, 281, 289, 311–312, 350–351, 373–374, 385, 588, 626, 653, 771, 792–793, 908–909, 911, 930, 1009)

34. That, when made by the "hot-pack" process with gum, the "low test" cheese can be made to simulate a cheese of higher fat and lower moisture so closely that it cannot be readily distinguished by the ordinary purchaser from the higher fat and lower moisture cream cheese. (R. p. 46–47, 75, 80, 82, 156–157, 245, 260–261, 268, 281, 317–318, 358, 383–384, 653, 1043)

35. That the higher fat and lower moisture cheese contains, in general, a percentage of milk fat ranging between 34% and 40% and a percentage of moisture ranging between 50% and 55%. (R. p. 150–151, 337, 361, 372, 586, 599, 649, 651–652, 766, 790, 900–901, 1012, 1030, Govt. Exhibit No. 2)

36. That the higher fat and lower moisture cheese is sometimes made with more than 40% milk fat and less than 50% moisture, but, for competitive reasons, some manufacturers sometimes, especially when the "hot-pack" process and gum are employed, reduce the milk fat to less than 34% and increase the moisture to more than 55%. (R. 306–307, 311, 337, 372–373, 599, 625, 651–652, 736, 767–768, 930, Govt. Exhibit No. 2)

37. That some manufacturers add skim milk, and even water, to the curd in order to obtain a milk fat content lower, and a moisture content higher, than would otherwise result in the preparation of their product. (R. p. 30–31, 164–165, 1000)

38. That two-thirds or more of the cheese sold today as cream cheese is of the higher fat and lower moisture type. (R. p. 652, 979, 1028)

39. That the "low test" cheese is a cheaper product, and is nutritionally of less value than the higher fat and lower moisture cheese. (R. p. 47, 83–84, 156–157, 199, 302, 339, 367, 392–393, 933, 1019)

40. That the amount of moisture and the amount of milk fat contained in cream cheese can be accurately determined by the methods of analysis for cheese described in the publication entitled "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fourth Edition, 1935, at page 291; the moisture content by the method described under the heading "Moisture—Official," and the milk fat content by the method described

under the heading "Fat—Official." (R. p. 151–2)

41. That the methods referred to in Finding No. 40 are well-known to and recognized by food chemists, and that the publication referred to in Finding No. 40 is a publication which is readily available. (R. p. 152)

42. That the growth of mold on cream cheese causes spoilage of the cheese, and that perceptible mold growth renders the cheese unmarketable. (R. p. 314, 433–434, 441–442, 457–460, 502, 775, 780, 785, 1036–1037, 1130, 1161)

43. That either sodium propionate or calcium propionate is sometimes added in the preparation of cream cheese for the purpose of inhibiting or retarding mold growth. (R. p. 369, 1038–1039, 1105)

44. That, when sodium propionate or calcium propionate is used in the preparation of cream cheese, the amount used is such that the sodium propionate or calcium propionate present in the cheese does not exceed 0.15% by weight of the finished product. (R. p. 365, 420, 440, 442, 455, 469, 686, 1035)

45. That sodium propionate and calcium propionate are chemicals. (R. p. 438, 540, 553–554)

Proposed Regulation

§ 19.515 *Cream cheese—Identity; label statement of optional ingredients.* (a) Cream cheese is the food prepared from cream or a mixture of cream and sweet milk or sweet skim milk or both, by the procedure set forth in subsection (b). It contains not more than 55 percent of moisture and not less than 34 percent of milk fat, as determined by the methods prescribed on page 291 under "Moisture—Official" and "Fat—Official" of "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists", Fourth Edition, 1935.

(b) Cream, or a mixture of cream and sweet milk or sweet skim milk, is pasteurized and may be homogenized. Curd is formed by the action of added harmless lactic-acid-producing bacteria, with or without rennet and with or without heating. The curd is drained, with or without chilling or pressing or both. It may be worked and may be seasoned with salt; it may be heated and may be homogenized. In its preparation one or both of the following optional ingredients may be added :

(1) Gelatin, carob bean gum, gum tragacanth, gum karaya, or any combination of two or more of these, in a quantity not more than 0.5 part by weight to each 100 parts by weight of the finished cream cheese.

(2) Calcium propionate or sodium propionate, in a quantity not more than 0.15 part by weight to each 100 parts by weight of the finished cream cheese.

The finished cream cheese is soft; it is not subjected to curing. For the purposes of this section the word "milk" means cows' milk.

(c) When optional ingredient (1) is present, the label shall bear the statement "Gelatin Added" or "With Added Gelatin", "Vegetable Gum Added" or "With Added Vegetable Gum", or "Vegetable Gum and Gelatin Added" or "With Added Vegetable Gum and Gelatin", as the case may be. When optional ingredient (2) is present, the label shall bear the words "Calcium Propionate" or "Sodium Propionate", as the case may be, followed by the words "Added as Preservative". Wherever the name "Cream Cheese" appears on a label so conspicuously as to be easily seen under customary conditions of purchase, such statements and words shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter.

Any interested person whose appearance was filed at the hearing may, within 10 days from the date of the publication of this proposed order in the FEDERAL REGISTER, file with the Hearing Clerk of the Federal Security Agency, Office of the Assistant General Counsel, Room 2240, South Building, 14th Street and Independence Avenue, Washington, D. C., exceptions to this proposed order. Exceptions shall point out with particularity the alleged errors in the proposed order, and shall contain a specific reference to the page of the transcript of the testimony or to the exhibit on which such exception is based. Such exceptions may be accompanied with a memorandum brief in support thereof.

WAYNE COY,
Acting Federal Security Administrator.

SEPTEMBER 28, 1940.

[F. R. Doc. 40–4081; Filed, September 30, 1940; 3:03 p. m.]

SECURITIES AND EXCHANGE COMMISSION.

[File No. 70–163]

IN THE MATTER OF MICHIGAN CONSOLIDATED GAS COMPANY

NOTICE REGARDING FILING SUBJECT TO RULE U-8

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 28th day of September A. D. 1940.

Notice is hereby given that a declaration or application (or both), has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 by the above named party or parties; and

Notice is further given that any interested person may, not later than October 15, 1940, at 4:30 P. M., E. S. T., or 1:00 P. M., E. S. T., if such date be a Saturday, request the Commission in writing that a hearing be held on such matter, stating the reasons for such request and the nature of his interest, or may request that he be notified if the Commission should order a hearing thereon. At any time thereafter such declaration or application, as filed or as amended, may become effective or may be granted, as provided in Rule U-8 of the Rules and Regulations promulgated pursuant to said Act. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C.

All interested persons are referred to said declaration or application, which is on file in the office of said Commission, for a statement of the transactions therein proposed, which are summarized below:

The application is in connection with the proposed acquisition by the applicant, a subsidiary of The United Light and Power Company and American Light & Traction Company, both registered holding companies, of real and personal property in the natural gas field known as the Austin field situated in Mecosta County, Michigan. The Austin field comprises approximately 3,960 acres of land in the townships of Austin and Colfax in Mecosta County, Michigan.

The property to be acquired consists of land, gas, wells, well head connections, meter stations, gathering lines, oil and gas leases, gas leases and contracts covering the sale of gas from said land. The application states that applicant has entered into an agreement with W. C. Taggart, et al., for the purchase of certain property in the Austin field for the sum of $750,000 in cash, and has obtained an option (exercisable on or before November 1, 1940) to purchase additional property in the Austin field for the sum of $30,000 in cash. Approximately 2,500 acres of land and 12 producing wells are included in the aforedescribed agreement and option, and the applicant estimates that said lands cover substantially 98% of the natural gas in the Austin field.

In addition to the foregoing, applicant intends to purchase the remaining property in the Austin field, consisting of approximately 1,500 acres of land, gas, two gas producing wells, oil and gas leases, gas leases and contracts covering the sale of gas relating thereto, if it is able to do so at a cost not to exceed $20,000. If unable to effect the said purchase of the land, as an alternative applicant will take long-term leases.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40–4089; Filed, October 1, 1940; 11:40 a. m.]

[File No. 2–4359]

IN THE MATTER OF AMERICAN TUNG GROVE DEVELOPMENTS, INC.

STOP ORDER

At a regular session of the Securities and Exchange Commission, held at its

office in the City of Washington, D. C., on the 30th day of September, A. D. 1940.

This matter coming on to be heard before the Commission on the registration statement of American Tung Grove Developments, Inc., a Mississippi corporation, after confirmed telegraphic notice to said registrant that it appeared that said registration statement included untrue statements of material facts and omitted to state material facts required to be stated and omitted to state material facts necessary to make the statements therein not misleading, and upon evidence received upon the allegations made in the notice of hearing duly served by the Commission on said registrant; and

The Commission having duly considered the matter, and finding that said registration statement includes untrue statements of material facts and omits to state material facts required to be stated therein and material facts necessary to make the statements therein not misleading, all as more fully set forth in the Findings and Opinion of the Commission this day issued; and

The Commission now being fully advised in the premises;

It is ordered, Pursuant to section 8 (d) of the Securities Act of 1933, that the effectiveness of the registration statement filed by American Tung Grove Developments, Inc., a Mississippi corporation, be and the same hereby is suspended.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-4088; Filed, October 1, 1940; 11:40 a. m.]

[File No. 70-158]

IN THE MATTER OF LEONARD S. FLORSHEIM, TRUSTEE OF INLAND POWER & LIGHT CORPORATION, DEBTOR, AND MICHIGAN PUBLIC SERVICE COMPANY

ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 30th day of September, A. D. 1940.

A declaration and application having been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 by the above named persons, and notice having been given of the filing thereof by publication in the FEDERAL REGISTER, and otherwise, as provided by Rule U-8 under said Act; and

It appearing to the Commission that it is appropriate and in the public interest and the interests of investors and consumers that a hearing be held with respect to said declaration and application, and that said declaration shall not become effective or said application be granted except pursuant to further order of the Commission, and that at said hearing there be considered, among other things, the various matters hereinafter set forth;

It is ordered, That a hearing on such matter under the applicable provisions of said Act and the Rules of the Commission thereunder be held on October 14, 1940, at 10:00 A. M. at the office of the Securities and Exchange Commission, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing room clerk in Room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective;

It is further ordered, That Willis E. Monty, or any other officer or officers of the Commission designated by it for that purpose, shall preside at the hearing in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice;

It is further ordered, That, without limiting the scope of issues presented by such application and declaration, particular attention will be directed at said hearing to the following matters and questions:

Description of Declaration and Application

Said Leonard S. Florsheim, Trustee of Inland Power & Light Corporation, debtor, appointed trustee of said corporation by the District Court of the United States for the Northern District of Illinois, Eastern Division, in proceedings entitled "In the Matter of Commonwealth Light and Power Company, a corporation, Debtor; Inland Power & Light Corporation, a corporation, Debtor, Consolidated Proceedings for the Reorganization of Certain Corporations No. 52028," now owns beneficially 85,000 shares of the common stock of Michigan Public Service Company, subsidiary of the trust estate, being all of the outstanding common stock of the company. Said shares are presently of no par value but by amendment to be made before the transaction is consummated they will be given a par value of $20 per share. Said shares are pledged with Central Hanover Bank and Trust Company of New York, along with certain other collateral, to secure the 6% collateral trust gold bonds of Inland Power & Light Corporation in the principal amount of $4,782,500. The Trustee is also the beneficial owner of certain promissory demand notes of said Michigan Public Service Company aggregating in principal amount $620,132.24, bearing interest at 6¼% per annum, which promissory notes are held by the Trustee among the free assets of the trust estate of Inland Power & Light Corporation.

The Trustee proposes to sell all of said shares of common stock to Otis & Co. and others, as Underwriters, for distribution to the public for the consideration of $1,045,134.24. At the same time said promissory demand notes will be surrendered by the Trustee to Michigan Public Service Company for cancellation as a contribution to the capital of said Company, there being reserved, however, to said United States District Court full power to allocate said consideration of $1,045,134.24 between said shares of common stock and said promissory notes in such manner and in such amounts as it shall see fit.

The sale of said common stock and the surrender of said notes are part of a general program whereby the first mortgage 5% bonds of said Michigan Public Service Company presently outstanding in the sum of $3,943,000 will be refunded and the treasury of that Company will be reimbursed in part for additions and extensions to its plants and properties, by means of $3,500,000 new first mortgage 4% bonds, Series A, due October 1, 1965, and $750,000 serial 4% debentures maturing in the amount of $75,000 each year over a period of ten years.

As a part of the same general program it is proposed that all cumulative dividends now in arrears upon the 7% and 6% preferred stock and $6 junior preferred stock of said Michigan Public Service Company, amounting to $135,110.25 shall be paid up, and that said Company shall offer to the holders of said preferred shares the opportunity to exchange such shares for shares of a new issue of preferred stock ("6% series of 1940") to be made available by appropriate amendment of the Articles of Incorporation, which new preferred stock shall not contain the provision in the stock presently outstanding requiring the Company to redeem it December 31, 1956. The basis of such exchange is to be share for share as regards the present 6% preferred, and share for share plus a premium of $7 per share in the case of the present 7% preferred.

Scope of Hearing

1. Whether the proposed issue and sale of bonds and debentures by Michigan are solely for the purpose of financing the business of Michigan and have been approved by the Public Service Commission of the State of Michigan;

2. Whether the securities to be issued are reasonably adapted to the security structure and earning power of Michigan;

3. Whether the proposed financing is necessary or appropriate to the economical and efficient operation of the trust estate of Inland, and Michigan;

4. Whether fees and commissions or other remuneration to be paid, directly or indirectly, are reasonable;

5. Whether the terms and conditions of the proposed transaction with respect to the consideration to be received, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest and similar matters are detri-

mental to the public interest or the interests of investors or consumers; and

6. Whether the terms and conditions of the proposed transaction generally are detrimental to the public interest or the interests of investors or consumers.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-4091; Filed, October 1, 1940; 11:40 a. m.]

[File No. 70-165]

IN THE MATTER OF WISCONSIN MICHIGAN POWER COMPANY AND THE NORTH AMERICAN COMPANY

NOTICE REGARDING FILING SUBJECT TO RULE U-8

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 30th day of September, A. D. 1940.

Notice is hereby given that a declaration or application (or both), has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 by the above named party or parties; and

Notice is further given that any interested person may, not later than October 17, 1940, at 4:30 P. M., E. S. T., or 1:00 P. M., E. S. T., if such date be a Saturday, request the Commission in writing that a hearing be held on such matter, stating the reasons for such request and the nature of his interest, or may request that he be notified if the Commission should order a hearing thereon. At any time thereafter such declaration or application, as filed or as amended, may become effective or may be granted, as provided in Rule U-8 of the Rules and Regulations promulgated pursuant to said Act. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C.

All interested persons are referred to said declaration or application, which is on file in the office of said Commission, for a statement of the transactions therein proposed, which are summarized below:

Wisconsin Michigan Power Company, a subsidiary of The North American Company, a registered holding company, presently the owner of all of the common stock of said subsidiary, proposes to issue and sell to The North American Company 28,750 shares of the former's common stock at the par value thereof, $20.00 per share; and The North American Company proposes to acquire said stock at said price for cash, the aggregate purchase price being $575,000.

Wisconsin Michigan Power Company represents that the proceeds from the sale of said stock will be used to finance additions and betterments to its plants and distributing system (including the construction of the Michigamme storage reservoir, estimated to cost approximately $525,000), to reimburse its treasury for expenditures previously made for additions and betterments, and for required working capital.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-4090; Filed October 1, 1940; 11:40 a. m.]